

§ 1944.557

7 CFR Ch. XVIII (1–1–04 Edition)

maintain the property in a decent, safe, and sanitary manner. When an escrow deposit is used, the tenant shall deposit into escrow, when the rent is due, the amount required by the lease. The escrow deposits must continue until the complaint is resolved through informal discussion or by the hearing officer or panel. The rent must be deposited in a federally insured financial institution or with a bonded independent agent. Failure to make timely escrow payments will result in a termination of the tenant grievance and appeals procedure and all sums will immediately become due and payable under the lease. Receipts of deposit must be available for examination by the borrower or the borrower's designee.

(g) *Failure to request a hearing.* If the applicant/tenant does not request a hearing within the time provided by paragraph (a) of this section, the borrower's disposition of the grievance or appeal will become final.

§ 1944.557 Procedures governing the hearing.

(a) Subject to paragraph (b) of this section, the hearing will be an informal proceeding before a hearing officer or hearing panel at which evidence may be received without regard to whether that evidence could be used in judicial proceedings.

(b) The hearing must be structured so as to provide the basic safeguards for both the borrower and the tenant, which must include:

(1) The right of both parties to be represented by counsel or another person(s) chosen as their representative.

(2) The right of the applicant/tenant to a private hearing unless a public hearing is requested.

(3) The right of the applicant/tenant to present oral or written evidence and arguments in support of their grievance or appeal and to refute the evidence of all witnesses on whose testimony or information the borrower relies.

(4) The right of the borrower to present oral or written evidence and arguments in support of the decision, to refute evidence relied upon by the applicant/tenant, and to confront and cross-examine all witnesses on whose

testimony or information the tenant relies.

(5) A decision based solely and exclusively upon the facts presented at the hearing.

(c) At the hearing the applicant/tenant must present evidence that he/she is entitled to the relief sought, and thereafter, the borrower shall present evidence showing the basis of its action or failure to act against that which the grievance or appeal is directed.

(d) The hearing officer or hearing panel shall require that the borrower, the applicant/tenant, counsel and other participants or spectators conduct themselves in an orderly manner. Failure to comply with the directions of the hearing officer or hearing panel to obtain order may result in exclusion from the proceedings, or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.

(e) If the applicant/tenant (or his/her representative) fails to appear at a scheduled hearing, the hearing officer or hearing panel may make a determination to postpone the hearing for not to exceed five business days or may make a determination that the party has waived his or her right to a hearing under this subpart. Both the applicant/tenant and the borrower shall be notified of the determination of the hearing officer or hearing panel.

§ 1944.558 Decision of the hearing officer or hearing panel.

(a) The hearing officer or hearing panel shall prepare a written decision, together with the reasons therefor, within 10 calendar days after the hearing. The written decision must be specific as to the facts presented which were the basis upon which the decision was rendered. Copies of the decision must be sent to the borrower, the applicant/tenant, and the FmHA or its successor agency under Public Law 103-354 District Director.

(b) The decision of the hearing officer or hearing panel shall be binding upon the parties to the hearing unless the parties to the hearing are notified within 10 calendar days by the District Director that the decision violates FmHA or its successor agency under